

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

AL DEC and JAN SMITH-DEC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil No. 17-282
	)	
UNITED STATES OF AMERICA;	)	
JEFFREY TROXELL, M.D.; and ATLANTIC	)	
UROLOGY ASSOCIATES,	)	
	)	
Defendants.	)	

NOTICE OF REMOVAL OF CIVIL ACTION

The United States of America, removes the above case for the following reasons:

1. Lamprey Health Care; Anne Lacey, APRN; Marita Gove, APRN; Katrin Bergeron, M.D.; and Kathryn Bonafede, M.D. (“Federal Employees”), are defendants in a complaint now pending in Rockingham Superior Court, New Hampshire, No. 218-2017-CV-00349, entitled Al Dec and Jan Smith-Dec v. Jeffrey Troxell, M.D.; Anne Lacey, APRN; Marita Gove, APRC, Katrin Bergeron, M.D.; Kathryn Bodafede, M.D.; Atlantic Urology Associates and Lamprey Health Care. No hearings or trial have been scheduled in this matter. A copy of the Complaint and Summons are attached as Exhibit A.

2. The action commenced against the Federal Employees in state court alleges acts or omissions by them purportedly entitling Plaintiffs to monetary damages. This removal is brought pursuant to 42 U.S.C. § 233(c).

3. Defendants Lacey, Gove, Bergeron and Bonafede were, at all times relevant to the allegations contained in the complaint, employees of Lamprey Health Care (“Lamprey”). Declaration of Meredith Torres, attached to this Notice as Exhibit B (Torres Dec.), at ¶ 6. Lamprey is a grantee of the U.S. Department of Health and Human Services. Lamprey Pursuant

to 42 U.S.C. § 233(g) and (h), the United States Department of Health and Human Services has deemed ACHS and its employees who are health care practitioners, to be employees of the federal government for purposes of coverage under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671, et seq., for acts and omissions during the period of time relevant to Plaintiff's complaint. Torres Dec. at ¶ 5.

4. The Attorney General of the United States, by the United States Attorney for the District of New Hampshire, has certified, pursuant to 42 U.S.C. § 233(c), that the Federal Employees, were acting within the scope of their deemed employment as employees of the United States of America for purposes of the Federal Tort Claims Act, at the time of the incidents alleged in the Complaint. See Certification of John J. Farley, Acting United States Attorney, attached as Exhibit C, at ¶ 3.

5. Both 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) provide that, upon certification by the Attorney General, any civil action or proceedings commenced in state court shall be removed without bond at any time before trial to the district court of the United States of the district and division embracing the place in which the action or proceeding is pending, and that the action or proceeding shall be deemed to be an action or proceeding against the United States under the provisions of the FTCA.

6. The above-captioned action is one which may be removed without bond to this Court pursuant to 28 U.S.C. § 2679(d) and 42 U.S.C. 233(a) to the extent Plaintiffs seek judgment for damages allegedly resulting from actions performed by Federal Employees, while acting within the scope of their deemed employment with the United States of America. Under

the 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(b), this action is against the United States of America.

Therefore, this action now pending in Rockingham County Superior Court is properly removed from that court to this Court, pursuant to 42 U.S.C. § 233(d) and 28 U.S.C. § 2679(d).

/s/ T. David Plourde

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